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IN THE

Supreme Court of the United States

October Term [redacted] 1969

No. 98

LONG BEACH BANANA DISTRIBUTORS, INC., a California corporation, *et al.*,

Petitioners,

vs.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,

Respondent.

CONSOLIDATED PRODUCE CO., a California corporation, *et al.*,

Petitioners,

vs.

PACIFIC ELECTRIC RAILWAY CO.,

Respondent.

EUGENE NELLA, SAM CANCILLA and DIEGO CANCILLA, dba BANANA KING, etc., *et al.*,

Petitioners,

vs.

SOUTHERN PACIFIC COMPANY,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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SUBJECT INDEX

	Page
Opinions Below	1
Jurisdiction	2
Question Presented	2
Statute Involved	2
Statement of the Case	3
Federal Jurisdiction Below	3
Argument	4
Conclusion	5
Appendix A. Opinion of the United States Court of Appeals for the Ninth Circuit	App. p. 1
Appendix B. Findings of Fact and Conclusions of Law	App. p. 21

TABLE OF AUTHORITIES CITED

Cases	Page
Chicago, M. St. P. & P. Ry. v. Campbell River Mills Co., 53 F. 2d 69	2, 4
Pennsylvania Railroad Co. v. P.U.C. of Ohio, 298 U.S. 170	4, 5

Statutes	
United States Code, Title 28, Sec. 1254(1)	2
United States Code, Title 28, Sec. 1441(b)	3
United States Code, Title 49, Sec. 1	2
United States Code, Title 49, Sec. 1(2)(a)	2, 4

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Opinions Below.

This Petition for Writ of Certiorari is directed to the review of a decision rendered by the United States Court of Appeals for the Ninth Circuit, which does not

appear to have been reported in the official reports as of this time. A copy of that opinion is appended hereto as Appendix "A". Findings of fact and conclusions of law in the District Court below is appended as Appendix "B".

Jurisdiction.

The judgment of the Court of Appeals was rendered and filed on February 6, 1969. This court has jurisdiction under the provisions of Title 28, U.S. Code, Section 1254(1).

Question Presented.

The question presented herein for review is whether or not the Court of Appeals was in error in overruling its prior decision in *Chicago, M. St. P. & P. Ry. v. Campbell River Mills Co.*, 9 Cir., 53 F. 2d 69. That decision had interpreted portions of Section 1 of the Interstate Commerce Act to mean that the Act did not apply to common carrier shipments wholly within one state where the goods had been brought into the state from a foreign country by means other than common carriage. The decision of February 6, 1969, rejects the prior interpretation and holds that it is immaterial whether or not the goods have been brought into the state from a foreign country by private or common carrier.

Statute Involved.

The relevant portion of the Interstate Commerce Act is Title 49, U.S. Code Section 1(2)(a) and is set out in the opinion of the Court of Appeals, appended hereto as Appendix "A".

Statement of the Case.

This case involves three actions for refund of freight overcharges filed by petitioners, banana wholesalers, against respondents, rail common carriers. The three cases were consolidated for trial in the District Court below. The issue in the cases is the propriety of the application of the tariff rates which were charged and collected by the carriers from the petitioners. The commodity involved was bananas which arrived in California aboard vessels which petitioners contend were not common carriers. The bananas were then moved by the railroads from the ports of entry of Los Angeles and San Francisco to various destinations within the State of California, the movements being wholly within the state. Petitioners contend that the intrastate tariff rates were applicable; respondents contend that the interstate rates were applicable. At the time of the pretrial conference in the court below, the parties filed a Stipulation of Fact, which is referred to in Appendix "A". Thereafter, the railroads filed motions for summary judgment, which were granted by the District Court below. The appeal to the Court of Appeals followed.

Federal Jurisdiction Below.

The District Court found that it had jurisdiction on the basis of Title 28, U.S. Code, Section 1441(b).